

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10986NG

ULYSSES R. CHARLES,
Plaintiff

v.

CITY OF BOSTON, et al.
Defendants

**DEFENDANTS' MOTION TO STAY THE CASE PENDING THE COURT'S WRITTEN
DECISION OF DEFENDANT BOGDAN'S MOTION TO DISMISS AND OPPOSITION
TO PLAINTIFF'S MOTION FOR DEFAULT**

Defendants Stanley Bogdan ("Bogdan") and the City of Boston ("the City") respectfully move this Honorable Court to stay the case until the Court issues a written decision for Bogdan's Motion to Dismiss and oppose plaintiff's motion for default.

As grounds for their motion, Bogdan and the City state:

1. On January 20, 2005, the Court (Gertner, J.) heard oral arguments on Bogdan's Motion to Dismiss, which was based, in part, on his claim of qualified immunity.
2. The Court denied Bogdan's motion from the bench but stated that a written decision would be issued due to the claim of qualified immunity. See Docket, January 20, 2005.
3. Bogdan would like the opportunity to review the Court's written decision so that he may consider filing an interlocutory appeal regarding the denial of his claim of qualified immunity. See Mitchell v. Forsyth, 472 U.S. 511 (1985).
4. It would be contrary to the doctrine of qualified immunity for Bogdan to answer the complaint before having the opportunity to consider his right of interlocutory appeal. See Hegarty v. Somerset County, 25 F.3d 17, 18 (1st Cir. 1994).

5. Attorney for Bogdan and the City, Amy E. Ambarik, spoke to Maryellen Malloy, Courtroom Clerk for the Honorable Judge Gertner, regarding this issue and Clerk Malloy recommended filing a motion to stay the case.
6. On March 2, 2005, Attorney Ambarik explained these issues and reported her conversation with Clerk Malloy to Mayeti Gametchu, attorney for plaintiff. However, Attorney Gametchu filed a motion for entry of default.
7. Bogdan has not failed to plead or defend against plaintiff's lawsuit, as Fed.R.Civ.P 55 requires for a default. He filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and is waiting for the Court's written decision.
8. For the above reasons, Bogdan and the City respectfully request that the Court grant their motion to stay and deny plaintiff's motion for default.

WHEREFORE: Defendants, Bogdan and the City, respectfully request that this Honorable Court stay the case pending the Court's written decision regarding Bogdan's claim of qualified immunity and deny plaintiff's motion for default.

Respectfully submitted,
DEFENDANTS, STANLEY BOGDEN and
CITY OF BOSTON,
Merita A. Hopkins
Corporation Counsel
By their attorney:

/s/ Thomas R. Donohue
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